

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
AT CLARKSBURG**

WALHONDE TOOLS, INC.,	)	
	:	
Plaintiff,	)	
	:	
v.	)	
	:	
WILSON WORKS, INC., a West Virginia Corporation;	)	
NORTHCO CORP., a West Virginia Corporation;	:	
NAES POWER CONTRACTORS, INC., successor by	)	
merger to American Boiler & Chimney Company, a	:	
Washington Corporation;	)	
FOSTER WHEELER ZACK, INC., a Delaware	:	Civil Action No.
Corporation;	)	1:09-CV-00048
DAY & ZIMMERMAN NPS, INC., a Delaware	:	
Corporation	)	
Defendants.	:	Hon. Irene M. Keeley
	)	
And	:	
	)	
FOSTER WHEELER ZACK, INC.,	:	
	)	
Counterclaimant,	:	
	)	
v.	:	
	)	
WALHONDE TOOLS, INC., and	:	
GARY W. MCCLURE, an Individual,	)	
	:	
Counterclaim Defendants.	)	
	:	

**DEFENDANT FOSTER WHEELER ZACK, INC'S MARKMAN BRIEF**

Defendant, Foster Wheeler Zack, Inc., adopts and joins in the Markman  
brief being filed today by defendant Wilson Works, Inc.

FOSTER WHEELER ZACK, INC.

By Counsel,

/s Carl L. Fletcher, Jr.  
Carl L. Fletcher, Jr. (W. Va. Bar #1225)  
Bowles Rice McDavid Graff & Love LLP  
600 Quarrier Street  
Charleston, West Virginia 25301  
(304) 347-1149  
(304) 347-2867 (Fax)

Of Counsel:

/s Henry J. Renk  
Henry J. Renk  
FITZPATRICK, CELLA, HARPER & SCINTO  
1290 Avenue of the Americas  
New York, New York 10104  
(212) 218 -2100  
(212) 281-2200 (Fax)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
AT CLARKSBURG**

WALHONDE TOOLS, INC.,	)	
	:	
Plaintiff,	)	
	:	
v.	)	
	:	
WILSON WORKS, INC., a West Virginia Corporation;	)	
NORTHCO CORP., a West Virginia Corporation;	:	
NAES POWER CONTRACTORS, INC., successor by	)	
merger to American Boiler & Chimney Company, a	:	
Washington Corporation;	)	
FOSTER WHEELER ZACK, INC., a Delaware	:	Civil Action No.
Corporation;	)	1:09-CV-00048
DAY & ZIMMERMAN NPS, INC., a Delaware	:	
Corporation	)	
Defendants.	:	
	)	
and	:	
	)	
FOSTER WHEELER ZACK, INC.,	:	
	)	
Counterclaimant,	:	
	)	
v.	:	
	)	
WALHONDE TOOLS, INC., and	:	
GARY W. MCCLURE, an Individual,	)	
	:	
Counterclaim Defendants.	)	
	:	

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on September 1, 2010, the foregoing *Defendant Foster Wheeler Zack, Inc's Markman Brief*, was served upon the parties by electronic transmission (email), addressed as follows:

Robert R. Waters, Esq.  
Jason A. Poling, Esq.  
Olen L. York, Esq.  
WATERS LAW GROUP, PLLC  
633 Seventh Street  
Huntington, WV 25701  
[rrwaters@waterslawoffice.com](mailto:rrwaters@waterslawoffice.com)  
[japoling@waterslawoffice.com](mailto:japoling@waterslawoffice.com)  
*Counsel for Walhonde Tools, Inc.*

Allison L. Carr  
SPILMAN THOMAS & BATTLE, PLLC  
301 Grant Street, Suite 3440  
Pittsburgh, PA 15219  
[acarr@spilmanlaw.com](mailto:acarr@spilmanlaw.com)  
*Counsel for Wilson Works, Inc.*

James A. Walls  
Richard W. James  
Ryan Debski  
SPILMAN THOMAS & BATTLE, PLLC  
48 Donley Street, Suite 800  
Morgantown, West Virginia 26501  
[jwalls@spilmanlaw.com](mailto:jwalls@spilmanlaw.com)  
[rdebski@spilmanlaw.com](mailto:rdebski@spilmanlaw.com)  
[rjames@spilmanlaw.com](mailto:rjames@spilmanlaw.com)  
*Counsel for Wilson Works, Inc.*

Eric G. Soller  
PSC of WV  
PO Box 821  
Charleston, West Virginia  
[egs@pietragallo.com](mailto:egs@pietragallo.com)

*Counsel for Minnote Contracting Corporation*

Christopher S. Morris  
BAILEY & GLASSER, LLP  
209 Capitol Street  
Charleston, West Virginia 25301  
[cmorris@baileyglasser.com](mailto:cmorris@baileyglasser.com)  
*Counsel for NAES Power Contractors, Inc.*

Jack A. Wheat  
Christina I. Ryan  
STITES & HARBISON, PLLC  
400 West Market Street, Suite 1800  
Louisville, Kentucky 40202  
[jwheat@stites.com](mailto:jwheat@stites.com)  
[cryan@stites.com](mailto:cryan@stites.com)  
*Counsel for NAES Power Contractors, Inc.*

John C. Palmer, IV  
M. David Griffith, Jr.  
Robinson & McElwee, PLLC (Charleston)  
P.O. Box 1791  
Charleston, West Virginia 25326  
[jcp@ramlaw.com](mailto:jcp@ramlaw.com)  
[mdg@ramlaw.com](mailto:mdg@ramlaw.com)  
*Counsel for Day & Zimmermann NPS, Inc.*

Eric S. Marzluf  
James J. Kozuch  
Caesar Rivise Bernstein Cohen &  
Polotilow LTD  
1635 Market Street, 11<sup>TH</sup> Floor  
Philadelphia, Pennsylvania 19103  
[esmarzluf@crbcp.com](mailto:esmarzluf@crbcp.com)  
[jjkozuch@crbcp.com](mailto:jjkozuch@crbcp.com)  
*Counsel for Day & Zimmermann NPS, Inc.*

Robert J. D'Anniballe, Jr.  
PIETRAGALLO GORDON ALFANO  
BOSIK & RASPANTI, LLP  
3173 Main Street  
Weirton, West Virginia 26062  
[rid@Pietragallo.com](mailto:rid@Pietragallo.com)  
*Counsel for Minotte contracting  
Corporation*

Alan G. Towner  
PIETRAGALLO GORDON ALFANO  
BOSIK & RASPANTI, LLP  
1 Oxford Center, 38<sup>th</sup> Floor  
Pittsburgh, Pennsylvania 15219  
[agt@pietragallo.com](mailto:agt@pietragallo.com)  
*Counsel for Minotte contracting  
Corporation*

And I hereby certify that I have mailed, by United States Postal Service,  
the document to the following:

Northco Corp.  
P.O. Box 2100  
Morgantown, West Virginia 26502

/s/ Carl L. Fletcher, Jr.  
Carl L. Fletcher, Jr.